

**UNITED STATES DEPARTMENT OF COMMERCE****Patent and Trademark Office**Address: COMMISSIONER OF PATENTS AND TRADEMARKS
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/578,437 05/25/00 FAN

J 12515.4USD1

EXAMINER

PM82/0830

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#C2
NASHVILLE TN 37209

GELLNER, J
ART UNIT PAPER NUMBER

15

3643
DATE MAILED:

08/30/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary	Application No.	Applicant(s)	
	09/578,437	FAN, JIANHUA	
	Examiner	Art Unit	
	Jeffrey L. Gellner	3643	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 09 August 2001.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1,23-25,27-29,32,40,44 and 45 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1,23-25,27-29,32,40,44 and 45 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

PETER M. POON
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3600
Pmp

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on _____ is: a) approved b) disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election

Applicant's election of species I in Paper No. 14 (entered 9 August 2001) is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the election of species requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)). Therefore, the election of species is made final.

Claims 24, 29, and 32 are drawn to nonelected species III and, therefore, is withdrawn.

Claim 40 is drawn to nonelected species III and, therefore, is withdrawn.

Claim Objections

Claim 1 is objected to because of the following informalities:

In Claim 1, line 8, the "another" should be --other--.

In Claim 1, line 9, the verb "reached" should be --reaching--.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Art Unit: 3643

Claims 1, 23, 25, and 28 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In Claim 1 there is an inconsistency that renders the scope of the claim indefinite. Language in the preamble “tray for a plant pot” implies the claim is drawn to the subcombination of a tray. Language in the lines 7-8 “inserted into a bottom hole of the plant pot” imply the claim is drawn to the combination of a tray and a pot. Applicant must clarify the language of the claim so that it is drawn to either the subcombination - tray - or to the combination - a tray and pot.

Note: Examiner considers Claim 1 to be drawn to the combination of a tray and pot.

In Claim 1, lines 9 and 10, the clause “between side walls of pot and plate having a clearance/distance, so that air flow/ventilate under the plant pot thoroughly” is unclear as to what is between the pot and plate.

In Claim 25, line 3, “the plant pot” lacks antecedent basis.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Brankovic (US 4,083,146).

As to Claim 1, Brankovic discloses a tray with a pot (Figs. 1 and 2) comprising a plate (1 of Fig. 1) with side walls (3 of Fig. 1) and a bottom wall (7 of Fig. 1), the plate holding a liquid; a wick (12 of Fig. 1) accompanying the plate which provides fluid to a pot (11 of Fig. 1), the wick reaching from inside the pot to the tray bottom (see Fig. 1); and a support (9 of Fig. 1) coupled to the plate, the pot sitting directly on the support with a distance between the pot and the side walls to allow ventilation.

Claims 25 and 28 are rejected under 35 U.S.C. 102(b) as being anticipated by Gardner et al. (EP 0619940 A2).

As to Claim 25, Gardner et al. disclose a self watering apparatus (Fig. 1) comprising a plate (1 of Fig. 1) with side walls and a bottom wall and a shape different from a plant pot (4 of Fig. 1), part of the side walls (2 of Fig. 1) supporting the pot with a clearance between the walls of the plate and the walls of the pot; and a wick (9 of Fig. 1) for sucking fluid.

As to Claim 28, Gardner et al. further disclose a rod (2 of Fig. 1) for holding a pot.

Claims 27, 44, and 45 are rejected under 35 U.S.C. 102(b) as being anticipated by Nichtnennung beantragt "Nicht" (DT 2610613 A1).

As to Claim 27, Nicht discloses a self watering tray (Fig. 1) for a plant pot comprising a plate (1 of Fig. 10 with side walls, bottom, and fluid (4); a leg (10 of Fig. 1) coupled to the plate with two section, a smaller up section (region around 19 of Fig. 1) inserted in a pot (7 of Fig. 1) and a lower section (region around 30 and 40 of Fig. 1), the lower section supporting the pot (40 of Fig. 1).

As to Claim 44, Nicht further discloses a wicking material (30 of Fig. 1).

As to Claim 45, Nicht further discloses some wicking material in the pot (Fig. 1).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 23 is rejected under 35 U.S.C. 103(a) as being unpatentable over Brankovic (US 4,083,146) in view of Muller & C^{ie} (France no. 579.120).

As to Claim 23, the limitations of Claim 1 are disclosed as described above. Not disclosed is the wick disposed in a tube. Muller & C^{ie} however disclose a tray pot system with the wick disposed in a tube (Fig. 1). It would have obvious to one of ordinary skill in the art at the time of the invention to modify the tray of Brankovic by disposing the wick in a tube so as to protect the wick from tearing.

Conclusion

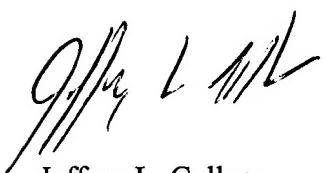
The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Caccuatire, Greenbaum, Martinelli et al., and Bassett disclose in the prior art various trays with wicks.

Art Unit: 3643

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Jeffrey L. Gellner whose telephone number is 703.305.0053. The Examiner can normally be reached Monday through Thursday from 8:30 am to 4:00 pm. The Examiner can also be reached on alternate Fridays.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's Supervisor, Peter Poon, can be reached at 703.308.2574. The fax phone numbers for the Technology Center where this application or proceeding is assigned are 703.305.7687, 703.305.3597, and 703.306.4195.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703.308.1113.



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